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Conference of the States Parties to the United Nations Convention against Corruption

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Addendum

III. Review of implementation of the United Nations Convention against Corruption

C. Outcome of the second cycle reviews

1. In order to facilitate the Group's discussion of the outcome of the second cycle reviews of chapters II (Preventive measures) and V (Asset recovery) of the Convention, the secretariat presented an oral update on initial trends observed based on the thematic reports prepared by the secretariat (CAC/COSP/IRG/2018/6 and CAC/COSP/IRG/2018/5). The secretariat informed the Group that nine executive summaries had been finalized, six of which had been completed prior to the conclusion of the thematic reports. Based on the completed executive summaries, trends were beginning to emerge in terms of challenges and good practices of implementing the two chapters of the Convention under review in the second review cycle.

2. In this regard, with respect to the implementation of Chapter II (Preventive measures) of the Convention, all States whose executive summaries had been completed at the time of drafting the thematic reports had received recommendations with respect to article 5 on preventive anti-corruption policies and practices, article 7 on the public sector and article 12 on preventive measures in the private sector. The highest number of good practices in preventing corruption had been recognized with regard to article 13 due to the importance that was given to the role played by civil society in governmental decision-making processes. States used various means to promote public participation such as referenda and direct consultations. With regard to the implementation of Chapter V (Asset recovery), the most prevalent challenges identified were related to the prevention and detection of proceeds of crime under article 52 of the Convention and to mechanisms for the recovery of property through cooperation related to confiscation under article 54 of the Convention. No good practices had been identified with regard to the implementation of article 56 of the Convention on Special Cooperation and article 58 on Financial Intelligence Units.

3. To facilitate deliberations on the implementation of Chapter V (Asset recovery) of the Convention, a panel focusing in particular on taking of measures as may be necessary to permit other States parties to initiate civil action in court to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention was convened.

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4. The panellist from Mauritius provided an outline of the legal framework applicable to mutual legal assistance and asset recovery in Mauritius. The panellist indicated that, on the basis of the Asset Recovery Act 2011, Mauritius recognized offences committed under the law of foreign States and that, on the basis of a request containing all documentation required, Mauritius could refer a case to its Asset Recovery Investigation Division. The Division would then attempt to locate the assets and subsequently file an *ex parte* application for a restriction order. Once a restriction order had been granted and served, an application for a recovery order could be made to the Supreme Court. In cases that were initiated on the basis of a request by a foreign State or in which the enforcement of a foreign order was requested, this application would be made based on a motion or an affidavit by the Asset Recovery Unit.

5. The panellist further illustrated his explanations by providing information on case examples in which assistance for asset recovery had been provided by Mauritius. In this regard, the panellist noted some challenges that Mauritius experienced as requested State party. In particular, he underscored the importance of ensuring that all documentation required to be able to execute a request was provided on time as the absence of documentation could lead to restriction orders being lifted before a recovery order could be made. Furthermore, the panellist indicated that the requirements to serve orders and for the Supreme Court to hear all parties prior to taking a decision on granting a recovery order could pose obstacles if the parties concerned were located abroad, making assistance by foreign authorities necessary. To facilitate international cooperation, the panellist highlighted the importance of using informal means of cooperation and practitioners' networks. Furthermore, the panellist informed the Group that a dedicated team at the Attorney-General's Office had been established to deal with incoming requests for mutual legal assistance and asset recovery and expressed his hope that this development would assist in ensuring timely responses to requests for mutual legal assistance.

6. The panellist from Chile informed the Group that, while Chile did not have specific legislation addressing mutual legal assistance and asset recovery, it relied on several domestic legal tools in order to respond to requests for mutual legal assistance. By way of example, the panellist referred to the provisions of Chile's Criminal Procedure Code, indicating that it allowed for the seizure and freezing of objects and documents related to investigations. In addition, she highlighted specialized legislation on anti-money-laundering and drug trafficking that provided for the possibility of seizing and freezing assets without the need for prior notification of the alleged offender.

7. Regarding international cooperation, the panellist indicated that Chile used international agreements and general principles of international law such as reciprocity as a basis for cooperation. In this regard, the panellist reiterated the importance of using informal cooperation mechanisms, including practitioners' networks, to trace, locate and identify assets before submitting an official request for mutual legal assistance. To conclude, the panellist shared an example of a successful asset recovery case in which assets had been seized and frozen on the basis of a request for assistance. The restitution of these assets was ongoing.

8. In the ensuing discussion, speakers expressed appreciation for the analysis contained in the second cycle thematic reports and encouraged the secretariat to continue to update the thematic reports. Speakers recognized that the analysis in the reports as a useful means for assisting States in the preparation or bench-marking of reviews, and well as development of their programmes. They stressed the importance of drawing lessons from challenges identified and improving national anti-corruption systems. One speaker recommended that the outcome of the thematic reports be used to develop training materials as well as monitoring mechanisms in the area of prevention and asset recovery. Other speakers recommended that the challenges highlighted in the thematic reports such as recruitment of public officials, politically exposed persons and the absence of emergency freezing powers could be the topics for future panel discussions in the Working Groups on Prevention and Asset Recovery. Speakers also welcomed further discussions on the good practices identified as a

means of raising awareness and sharing knowledge with other States. In this regard, speakers emphasized the benefits of specialized units, particularly in terms of concentrating expertise in one place, and as a means of speeding up cases. Speakers commended the use by States parties of the Convention as a legal basis, highlighting the value of practitioner networks that can help in identifying and securing assets. One speaker pointed out the usefulness of non-mandatory measures of recovering assets such as non-conviction based forfeiture as well as of guides on asset recovery.

9. Some speakers emphasized the need for recommendations to be based on the requirements of the Convention, rather than what could be considered good practices by States. Some speakers also expressed concern at the current scheduling of meetings given the limited data available from the completed reviews as well as the limited availability of practitioners and noted that there may be value in holding fewer sessions of the Implementation Review Group per year. One speaker encouraged States to publish their full reports in order to encourage better understanding by foreign countries of their legal frameworks, including as a means of enhancing both informal and formal cooperation.

10. The Secretary noted with gratitude the appreciation expressed by States for the analytical work carried out by the secretariat and assured the Group of the continuing efforts by the secretariat to update them as more reviews were completed. He further noted that in line with the request by the Group, the analysis would be shared as widely as possible with the view to assisting States parties in undertaking reforms and learning from good practices from other States parties. With respect to the discussion on the scheduling of the meetings of the Implementation Review Group, the Secretary recalled, that the meetings' schedule was based on the multi-year work programme. He further noted that the consideration of meeting schedules of the Group had been a long-term ongoing process and that the matter should be discussed by the Conference of the States Parties. He reminded the Group of the mandate of the Implementation Review Group, not only to advance practical aspects of the implementation of the Convention, but also to advise the Conference on policy matters related to the work of the Implementation Review Mechanism. The Secretary explained the limits within which the Review Mechanism operated and emphasized that the outcomes of reviews, including the recommendations, were the result of a thorough process ensuring constructive dialogue and close adherence to the terms of reference of the Mechanism. Other underlying considerations to be taken into account when drawing up the country review reports and executive summaries, were the need for consistency, credibility, high quality and legitimacy. He encouraged States to continue to read the available reports, including the State of Implementation report, which contained in-depth information on the measures taken by States to implement chapters 3 and 4 of the Convention. Moreover, the Secretary reminded the Group that it was expected to advise the Conference on the assessment of the performance of the Mechanism, in view of the discussion that needed to take place at the end of its first phase.